

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

RATHBONE, LLC, on behalf of itself
and all others similarly situated and on
behalf of XTO Energy, Inc.,

Plaintiff,

 \mathbf{v}_i

XTO ENERGY, INC., BOB R.
SIMPSON, KEITH A. HUTTON,
VAUGHN O. VANNERBERG, II,
WILLIAM H. ADAMS, III, LANE G.
COLLINS, PHILLIP R. KEVIL, JACK
P. RANDALL, SCOTT G. SHERMAN,
HERBERT D. SIMONS, LOUIS G.
BALDWIN, TIMOTHY L. PETRUS,
and GARY D. SIMPSON,

Defendants.

CIVIL ACTION NO. 11-149

MOTION TO DISMISS FOR LACK OF SERVICE

Nominal Defendant XTO Energy Inc. moves to dismiss this case under Fed. R. Civ. P. 4(m) for lack of service. In support of this motion, XTO would show the following:

1. This case was filed on March 7, 2011. [Dkt. No. 1.]
2. Rule 4(m) states that, “[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).
3. Plaintiff has not served any defendant in this action.
4. The expiration of 120 days from the date the complaint was filed was July 5, 2011.

5. XTO requests that this action be dismissed without prejudice. Alternatively, XTO requests that the Court enter an order requiring that service on all defendants be made within 30 days from entry of the Court's order.

Dated: July 6, 2011.

Respectfully submitted,

/s/ Charles W. Schwartz

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ATTORNEYS FOR XTO ENERGY INC.

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2011, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. All others were served a copy via U.S. mail postage prepaid.

/s/ Charles W. Schwartz
Charles W. Schwartz